

James W. Morando, CA Bar No. 87896
Deepak Gupta, CA Bar No. 226991
FARELLA BRAUN & MARTEL LLP
235 Montgomery Street, 17th Floor
San Francisco, California 94104
Telephone: 415.954.4457
Facsimile: 415.954.4480
Email: jmorando@fbm.com
Email: dgupta@fbm.com

Keiko L. Sugisaka, MN Bar No. 266152 (*Pro hac vice*)
Joseph P. Ceronsky, MN Bar No. 391059 (*Pro hac vice*)
MASLON EDELMAN BORMAN & BRAND, LLP
3300 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-4140
Telephone: 612-672-8200
Facsimile: 612-672-8367
Email: keiko.sugisaka@maslon.com
Email: joseph.ceronsky@maslon.com

ATTORNEYS FOR DEFENDANTS JINGIT LLC, JINGIT HOLDINGS, LLC, JINGIT FINANCIAL SERVICES, LLC, TODD ROOKE, JOE ROGNESS, SAM ASHKAR, PHIL HAZEL, HOLLY OLIVER, SHANNON DAVIS, JUSTIN JAMES, CHRIS OHLSEN, DAN FRAWLEY, DAVE MOOREHOUSE, II, TONY ABENA, CHRIS KARLS, JOHN E. FLEMING, AND MUSIC.ME, LLC

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

Indiezone, Inc., a Delaware corporation, and EoBuy, Limited an Irish private limited company,

Case No: 4:13-CV-04280 (VC)
Hearing Date: June 5, 2014
Hearing Time: 1:30 p.m.
Place: San Francisco Courthouse
Courtroom: 4, 17th Floor

Plaintiffs,

VS.

Todd Rooke, Joe Rogness, Phil Hazel, Sam Ashkar, Holly Oliver and U.S. Bank, collectively the ***RICO Defendants***;

**DEFENDANTS' MEMORANDUM IN
OPPOSITION TO PLAINTIFFS'
MOTION "REQUESTING AN
ENLARGEMENT OF TIME TO
SUBMIT A CORRECTED RESPONSE
AND/OR RENEW THEIR RESPONSE
TO THE DEFENDANTS' MOTIONS
TO COMPEL ARBITRATION,
DISMISS OR STAY THE
PROCEEDINGS"**

Jingit LLC, Jingit Holdings, LLC, Jingit Financial Services LLC., Music.Me, LLC., Tony Abena, John E. Fleming, Dan Frawley, Dave Moorehouse II, Chris Ohlsen, Justin James, Shannon Davis, Chris Karls in their capacities as officers, agents and/or

DEFS.' MEM. IN OPP'N TO PLS.' MOT. FOR
ENLARGEMENT OF TIME
- Case No: 4:13-CV-04280 (VC)

1 employees of Jingit LLC, ***Defendants in Negligence,***
 2 ***and Aiding/Abetting;***

3 Wal-Mart, General Electric, Target, DOE(s) and
 4 ROE(s) 1 through 10, ***Defendants in Negligence***
Secondary-Vicarious Infringement,

5 Defendants.

6

7 INTRODUCTION

8 Plaintiffs' original response to Defendants' motion to dismiss Plaintiff eoBuy, Limited for
 9 lack of capacity to sue admitted that eoBuy, Limited, as a dissolved company, lacked capacity but
 10 then argued that a different purported entity, "eoBuy Ventures Limited," was the correct plaintiff.
 11 Now, after also admitting that "eoBuy Ventures Limited" never existed, Plaintiffs seek to "renew"
 12 their response to Defendants' motion to include yet a third purported entity, "eoBuy Licensing
 13 Limited." This request should be denied because "eoBuy Licensing Limited" did not exist until last
 14 month, after Plaintiffs' CEO and principal purchased a dormant Irish taxi company with no relation
 15 to this case or the parties, changed its name from "Laraghcon Chauffeur Drive Limited" to "eoBuy
 16 Licensing Limited," changed its business objective from "taxi hire" to "software development," and
 17 backdated its corporate documents in an attempt to make it appear that this taxi company had been
 18 conducting a software business as "eoBuy" since 2008 with himself as the director. This deception
 19 provides no basis to allow Plaintiffs to renew their response to Defendants' motion or receive
 20 additional time to respond.

23 PROCEDURAL HISTORY

24 Plaintiffs Indiezone, Inc. and eoBuy, Limited filed their Complaint on September 16, 2013.
 25 (ECF 1.) In response, on January 10, 2014, the Jingit Defendants¹ moved to, *inter alia*, dismiss the

27 1 "Jingit Defendants" are Todd Rooke, Joe Rogness, Phil Hazel, Sam Ashkar, Holly Oliver,
 28 Jingit, LLC, Jingit Holdings, LLC, Jingit Financial Services, LLC, Music.Me, LLC, Tony Abena,
 John E. Fleming, Dan Frawley, Dave Moorehouse II, Chris Ohlsen, Justin James, Shannon Davis
 DEF'S. MEM. IN OPP'N TO PLS.' MOT. FOR

1 named Plaintiff eoBuy, Limited because it is a dissolved Irish corporation and therefore lacks
 2 capacity to bring suit under governing Irish law. (Mot. of Defs. to Compel Arbitration, ECF 29, Sec.
 3 II; Decl. of Brian Walker (“Walker Decl.”), ECF 30, ¶¶ 5-9, Exs. A & B.) Plaintiffs’ response to this
 4 motion was originally due on January 24, 2014, (Civil L.R. 7-3(a)), but on that day Plaintiffs filed a
 5 motion for extension of time to respond until February 14, 2014 because they were “waiting for
 6 documents to be delivered from a foreign non-domestic jurisdiction in order to properly respond....”
 7 (Pls.’ Mot., ECF 44; Dollinger Decl., ECF 45, p. 5 of 9.) Jingit Defendants did not oppose Plaintiffs’
 8 motion for additional time, (*see* Defs.’ Resp., ECF 47) and the Court granted it, (Order, ECF 50).

10 When Plaintiffs ultimately filed their response, they admitted that eoBuy, Limited had
 11 dissolved in 2008 and therefore lacked capacity to bring suit. (Pls.’ Mem. in Opp’n, ECF 54, p. 9;
 12 *see also* Decl. of Conor Fennelly (“Fennelly Decl.”), ECF 54-1, ¶ 1.) Plaintiffs represented to the
 13 Court that they had accidentally sued on behalf of the wrong “eoBuy” entity, and that the correct
 14 entity was “eoBuy Ventures Limited.” (Pls.’ Mem. in Opp’n, ECF 54, p. 10.) Plaintiffs then filed a
 15 motion for leave to amend their Complaint to add “eoBuy Ventures Limited” as a plaintiff. (ECF
 16 57.) However, as Defendants demonstrated in their reply in support of their original motion (ECF
 17 60) and in their response to Plaintiffs’ motion to amend their Complaint (ECF 66), a simple search
 18 on the Irish Companies Registration Office public website revealed that “eoBuy Ventures Limited”
 19 did not actually exist. (*See* Supplemental Decl. of Brian Walker, “Supp. Walker Decl.”, ECF 61, ¶¶
 20 3-4, Ex. A.)

23 In the face of this evidence, Plaintiffs did not file a reply brief in support of their first motion
 24 seeking leave to amend their Complaint (ECF 57).² Instead, Plaintiffs filed a second, separate motion
 25

26 and Chris Karls. Defendants U.S. Bank, Target, General Electric and Wal-Mart also joined the Jingit
 27 Defendants’ Motion to Dismiss. (ECF 35, 69 & 74.)

28 ² Mr. Dollinger’s Declaration filed in support of Plaintiffs’ instant motion to renew their response also refers to “enlarge[ing] their time to Reply to the Responses to its [first] Motion to Amend the Complaint for good cause.” (Dollinger Decl., ECF 91-1, p. 2 of 4.) Plaintiffs’ *motion*, DEFS.’ MEM. IN OPP’N TO PLS.’ MOT. FOR

1 for leave to amend their Complaint in which they admitted that eoBuy Ventures Limited also did not
 2 exist. (See Supplemental Decl. of Conor Fennelly (“Supp. Fennelly Decl.”), ECF 84-3 & 90-2, ¶ 4
 3 (filed in support of Pls.’ Mots. to Amend Compl., ECF 84 & 90).)³ In this second motion to amend
 4 their Complaint, Plaintiffs claimed that the correct eoBuy entity is actually yet another Irish
 5 company, “eoBuy Licensing Limited.” (*Id.* ¶¶ 1-5.) Mr. Fennelly represented to the Court that he
 6 “simply forgot” and discovered the true name of the correct entity by “review[ing] the Corporate
 7 filings.” (*Id.* ¶ 4.) Plaintiffs now represent that, sometime in 2008, eoBuy, Limited transferred its
 8 intellectual property and licenses to the “newly formed company eoBuy Licensing Limited,” which,
 9 according to Plaintiffs, “has been doing business as eoBuy since August 2008....” (*Id.* ¶¶ 3 & 5.) In
 10 addition to filing their second motion for leave to amend their complaint to add “eoBuy Licensing
 11 Limited,” Plaintiffs also filed the instant motion to “renew” their response to Jingit Defendants’
 12 original motion to, *inter alia*, dismiss eoBuy, Limited for lack of capacity to sue. (ECF 91.) Plaintiffs
 13 purportedly wish to add to their response that “eoBuy Licensing Limited is and was the intended
 14 Plaintiff in these proceedings.” (*Id.* ¶ 1.) Plaintiffs rely on the identical representations of Mr.
 15 Fennelly regarding eoBuy Licensing Limited in support of this motion, as his Supplemental
 16 Declaration filed in support of the instant motion (ECF 91-2) contains identical representations and
 17 statements of fact as those filed in support of Plaintiffs’ second motion for leave to amend their
 18 Complaint (ECF 84-3 & 90-2).

22 however, makes no mention of allowing Plaintiffs more time to file a reply in support of their first
 23 motion to amend their Complaint, which was due on March 14, 2014. Further, such a reply would
 24 appear to be moot, as Plaintiffs’ first motion to amend the Complaint sought to add “eoBuy Ventures
 Limited” (ECF 57), and their second motion to amend the Complaint (ECF 84 & 90) admits this
 entity does not exist.

25 ³ Plaintiffs’ originally filed their motion to amend their Complaint to add eoBuy Licensing
 26 Limited on April 1, 2014 (ECF 84), noticing the hearing for April 22, 2014, in contravention of
 27 Local Rule 7-2(a). Plaintiffs subsequently filed a second motion to amend their Complaint to add
 28 eoBuy Licensing Limited on April 9, 2014, with a hearing set for May 19, 2014 (ECF 90.) Plaintiffs
 filed the same Supplemental Declaration of Conor Fennelly with each filing (ECF 84-3 & 90-2).
 Defendants understand ECF 84 and 90 to be a single motion.

ARGUMENT

The Court Should Deny Plaintiffs' Motion Because it is Untimely, Unsupported, Futile and Made in Bad Faith.

Plaintiffs' motion is untimely, unsupported, futile and made in bad faith. As an initial matter, Plaintiffs' motion is untimely and procedurally improper. Civil Local Rule 7-3(d) does not allow additional filings after a reply is filed. Here, Jingit Defendants filed their Reply in support of their original motion on March 3, 2014; Plaintiffs then filed the current request to "renew" their response over a month later. (Defs.' Reply, ECF 60.) Plaintiffs also do not provide a valid basis for supplementing their response brief beyond their claim that they twice "simply forgot" the "official[]" name of their own plaintiff. (See Supp. Fennelly Decl., ECF 84-3, 90-2 & 91-2, ¶ 4.) Where there is no legitimate excuse for untimely, supplementary filings, they should not be considered. See *Guerrero v. Pepsi Bottling Group, Inc.*, No. C-06-06026 RMW, 2007 U.S. Dist. LEXIS 3076, at *5 (N.D. Cal. Jan. 3, 2007) (striking supplemental response memorandum pursuant to Civil L.R. 7-3(d) where "[t]here [wa]s no apparent excuse for [the] late filing...."). Plaintiffs' purported forgetfulness regarding which of its purported companies exists and is an appropriate party to this lawsuit is simply not a valid excuse, and Plaintiffs' motion should therefore be denied.

19 Further, Plaintiffs' attempt to substitute "eoBuy Licensing Limited" as the "intended"
20 plaintiff is both futile and made in bad faith. As demonstrated in Jingit Defendants' Opposition to
21 Plaintiffs' second motion for leave to amend their Complaint to add eoBuy Licensing Limited (filed
22 simultaneously herewith at ECF 94⁴), eoBuy Licensing Limited has *not*, as Plaintiffs claim, "been
23 doing business as eoBuy since August 2008." (See Supp. Fennelly Decl., ECF 84-3, 90-2 & 91-2,
24 ¶ 5.) Rather, eoBuy Licensing Limited did not even *exist* until March 13, 2014. (Second

⁴ Jingit Defendants' Opposition to Plaintiffs' motion for leave to amend their Complaint to add "eoBuy Licensing Limited," filed simultaneously herewith, establishes the corporate history of Laraghcon Chauffeur Drive Limited (renamed "eoBuy Licensing Limited") in full detail. For sake of efficiency, Defendants refrain from repeating the full factual history herein and refer the Court to that memorandum.

1 Supplemental Declaration of Brian Walker (“Sec. Supp. Walker Decl.”), ECF 95, ¶ 9, Ex. D.) Public
2 records available from the Irish Companies Registration Office show that, in February of this year—
3 the month *after* Jingit Defendants moved to dismiss the dissolved eoBuy, Limited—Mr. Fennelly
4 purchased a dormant taxi company with no relation to the parties in this case or the allegations in the
5 Complaint, changed its name from “Laraghcon Chauffeur Drive Limited” to “eoBuy Licensing
6 Limited,” changed its objective from “taxi hire” to “software development,” and made himself
7 director and secretary. (*See id.* ¶¶ 8-22, Exs. B-G.) Plaintiffs’ attempt to add as a plaintiff a wholly
8 unrelated entity that it created just last month is both futile and made in bad faith. Therefore, this
9 Court should deny Plaintiffs’ motion.

11 Alternatively, if the Court does grant Plaintiffs' motion to renew their response, Jingit
12 Defendants respectfully request the opportunity to file a supplemental reply memorandum to
13 Plaintiffs' renewed response.
14

CONCLUSION

16 For the foregoing reasons, the Jingit Defendants respectfully ask this Court to deny Plaintiffs'
17 Motion to Renew Their Response to Defendants' Motion to Compel Arbitration with Indiezone, Inc.,
18 Dismiss eoBuy, Limited and Stay all Remaining Proceedings.

20 | Dated: April 23, 2014

MASLON EDELMAN BORMAN & BRAND, LLP

**ATTORNEYS FOR DEFENDANTS JINGIT LLC,
JINGIT HOLDINGS, LLC, JINGIT FINANCIAL
SERVICES, LLC, MUSIC.ME, LLC, TODD
ROOKE, JOE ROGNESS, SAM ASHKAR, PHIL
HAZEL, HOLLY OLIVER, SHANNON DAVIS,
JUSTIN JAMES, CHRIS OHLSEN, DAN
FRAWLEY, DAVE MOOREHOUSE II, TONY
ABENA, CHRIS KARLS AND JOHN E.
FLEMING**